

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DEN:POSTF-103051-02
PJSeewell

date: **MAR 01 2002**

to: John Salazar, LMSB Group 1294
Team Manager

from: Area Counsel
(Natural Resources:Houston)

subject: Request for LMSB Division Counsel Assistance - Authority to Sign
Statute Extension for TEFRA Partnership

EIN: [REDACTED]

Last Known Address: [REDACTED]
[REDACTED]

We have written this memorandum in response to your request for assistance dated January 4, 2002 regarding the validity of a statute extension signed by [REDACTED] as "CFO of managing member." Simultaneously with the issuance of this advice to you, we will be sending it to the National Office for a ten day review under the Non-Docketed Significant Advice program. Please wait until this review is completed before acting on this advice. This memorandum should not be cited as precedent.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUE

1. Whether the Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership, executed by [REDACTED] as "CFO of managing member" is valid for the [REDACTED] taxable year?

2. Whether the representative capacity of the signing party is properly shown on the Form 872-P submitted to the Service?

CONCLUSION

1. Yes, the Form 872-P which was signed on [REDACTED] by [REDACTED] is valid.
2. While the Form 872-P is valid and binding on the partners of [REDACTED], the representative capacity of the signing party is not properly shown.

FACTS

I have relied on the facts set out in this memorandum for my opinion in this case. If you believe that I should consider additional facts, you should notify me as this could change my opinion.

The taxpayer, [REDACTED] is a limited liability company organized in Delaware and engaged in the business of investing. On its U.S. Partnership Returns of Income, Form 1065, [REDACTED] designated [REDACTED] as the tax matters partner [hereinafter "TMP"] of the partnership for the [REDACTED] and [REDACTED] taxable years. [REDACTED] of the Operating Agreement shows that [REDACTED] was the manager of [REDACTED]. [REDACTED]'s Schedule K-1 shows that [REDACTED] was a member who held a variable percent interest during the [REDACTED] and [REDACTED] tax years.

[REDACTED] designated [REDACTED] as the TMP for the [REDACTED] and [REDACTED] taxable years on their Forms 1065. [REDACTED] was a general partner of [REDACTED].

On [REDACTED], [REDACTED] changed its name to [REDACTED]. On [REDACTED], [REDACTED] reorganized into [REDACTED]. On [REDACTED], [REDACTED] changed its name to [REDACTED]. All of these entities used the same EIN, [REDACTED].

On [REDACTED], [REDACTED] changed its name to [REDACTED]. Both entities used the same EIN, [REDACTED].

[REDACTED] signed both the [REDACTED] and [REDACTED] Forms 1065 for [REDACTED]. On the [REDACTED] Form 1065, he simply signed his name. On the [REDACTED] Form 1065, he included the notation "CFO of managing member" after his signature.

[REDACTED] also signed the [REDACTED] Form 1065 for [REDACTED] and the [REDACTED] Form 1065 for [REDACTED] (F/K/A [REDACTED]). On the [REDACTED] Form 1065, he simply signed his

name. On the [REDACTED] Form 1065, he included the notation "CFO of general partner" after his signature.

On [REDACTED], [REDACTED] signed Form 872-P, Consent to Extend the Time to Assess Tax Attributable to Items of a Partnership, for [REDACTED] on the line for TMP. This consent was for the [REDACTED] taxable year. [REDACTED] included the notation "CFO of managing member" after his signature.

As of [REDACTED], [REDACTED] still served as Treasurer of [REDACTED] (formerly known as [REDACTED]). [REDACTED] appointed [REDACTED] to this position on [REDACTED].

LEGAL DISCUSSION

I.R.C. § 6229(a) provides that the period for assessing any tax attributable to partnership items (or to affected items) with respect to any partner will not expire before three years from the later of the due date of the entity's return (without regard to extensions) or the date the entity's return is filed.

I.R.C. § 6229(b)(1)(B) allows the three year period to be extended with respect to all partners at any time during the initial three-year period by an agreement entered into by the Secretary and either the tax matters partner or "any other person authorized by the partnership in writing to enter into such an agreement."

Final regulations governing the designation or selection of tax matters partners for limited liability companies apply to designations, selections, and terminations occurring on or after December 23, 1996.

I.R.C. § 6231(a)(7) provides that the TMP of any partnership is the general partner designated as the tax matters partner as provided in regulations, or if there has been no designation, the general partner having the largest profits interest in the partnership at the close of the taxable year involved.

Treas. Reg. § 301.6231(a)(7)-1(l)(1) provides that a designation of a TMP for a taxable year shall remain in effect until liquidation or dissolution of the TMP, if the TMP is an entity; the partnership items of the TMP become nonpartnership items under I.R.C. § 6231(c) (relating to special enforcement areas); or upon revocation or subsequent designation of the TMP.

Under Treas. Reg. § 301.6321(a)(7)-2(a), only a member-manager is treated as a general partner for purposes of applying

I.R.C. § 6231(a)(7) and Treas. Reg. § 301.6231(a)(7)-1.

I.R.C. § 6501(c)(4) provides that the Service and a taxpayer may consent in writing to an extension of the time for making an assessment if the consent is executed before the expiration of the normal period of assessment or the extension date agreed upon in a prior extension agreement between the parties.

I.R.C. § 6061 provides that any return, statement, or other document made under any internal revenue laws must be signed in accordance with the applicable forms and regulations.

The period of limitations within which to assess tax is generally governed by I.R.C. § 6501. In the case of tax attributable to adjustment of partnership items, the unified procedures of TEFRA and I.R.C. § 6229 apply. See Rhone-Poulenc Surfactants & Specialties, L.P. v. Commissioner, 114 T.C. 533. I.R.C. § 6229(b)(1)(B) provides that the period within which to assess tax attributable to partnership items may be extended on behalf of all partners by an agreement with the TMP. In determining the validity of a consent under I.R.C. § 6229(b)(1)(B), the requirements of I.R.C. § 6501 as well as those of I.R.C. § 6229(b) must be taken into account. In CC&F Western Operations Ltd. P'ship v. Commissioner, T.C. Memo. 2000-286, the court found that "[i]n drafting section 6229, Congress did not intend to create a completely separate statute of limitations for assessments attributable to partnership items. Instead, section 6229 merely supplements section 6501." Id. (citing Rhone-Poulenc, 114 T.C. at 545). Thus, the Service must comply with the requirements of I.R.C. § 6501(c)(4)(B) in securing a consent under I.R.C. § 6229(b)(1)(B).

The TMP of [REDACTED] is [REDACTED] (formerly known as [REDACTED], formerly known as [REDACTED], formerly known as [REDACTED]). The TMP of [REDACTED] is [REDACTED] (formerly known as [REDACTED]). As Treasurer of [REDACTED], [REDACTED] is authorized to execute consents to extend the period of limitations on behalf of [REDACTED]. See Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. The Form 872-P for [REDACTED] was executed by [REDACTED]. He was authorized to execute this consent because he is an officer of the TMP of [REDACTED], and [REDACTED] is the TMP of [REDACTED]. Thus, the consent for [REDACTED] is effective and binds the partners of [REDACTED].

While the Form 872-P is valid and binding on the partners of [REDACTED], the representative capacity of the signing party is [REDACTED].

) not properly shown. Instead, the Form 872-P should contain the following language:

[REDACTED], Treasurer, [REDACTED] -
EIN: [REDACTED] (formerly known as [REDACTED]
[REDACTED]), General Partner and Tax Matters Partner of:

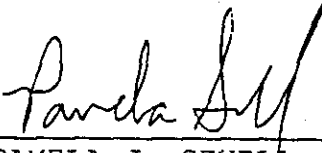
[REDACTED] - EIN: [REDACTED] (formerly known as
[REDACTED], successor in interest to
[REDACTED], formerly known as [REDACTED]
[REDACTED]), Managing-Member and Tax Matters Partner of:

[REDACTED] - EIN: [REDACTED]

This language should be placed in the bottom margin of the first page of the Form 872-P.

If you have any questions on this matter, please call me at (303) 844-2214 ext. 224.

DAVID J. MUNGO
Associate Area Counsel (LMSB)

By: 
PAMELA J. SEWELL
Attorney (LMSB)

cc: Tom Roginski, Revenue Agent, LMSB Group 1294